



PRELIMINARY DRAFT
No. 3202

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2013 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-4-3-1.3.

Synopsis: Rules of construction. Provides rules of trust construction concerning the powers of the settlors, the duties of the trustees, and the rights of the beneficiaries of revocable trusts.

Effective: July 1, 2013.



A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 30-4-3-1.3 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2013]: **Sec. 1.3. (a) While a trust is revocable and the settlor has**
4 **the capacity to revoke the trust:**

5 **(1) the rights of the beneficiaries are subject to the control of;**
6 **and**

7 **(2) the duties of the trustee are owed exclusively to;**
8 **the settlor.**

9 **(b) A settlor is presumed to have capacity for the purposes of**
10 **subsection (a) until the trustee receives from at least one (1)**
11 **licensed physician written certification that the settlor lacks the**
12 **capacity to revoke the trust.**

13 **(c) If a revocable trust has more than one settlor, the duties of**
14 **the trustee are owed to all of the settlors having capacity to revoke**
15 **the trust.**

16 **(d) During the period the power may be exercised, the holder of**
17 **a power of withdrawal has the rights of a settlor of a revocable**
18 **trust under this section to the extent of the property subject to the**
19 **power.**

20 **(e) If a trustee reasonably believes that a settlor of a revocable**
21 **trust lacks capacity to revoke the trust, the trustee is authorized to**
22 **provide information to the settlor's designated agent (even if the**
23 **designated agent is one (1) of two (2) or more trustees) or to any**
24 **beneficiary who, if the settlor were deceased, would be entitled to**
25 **distributions from the trust.**

26 **(f) A person who becomes a successor trustee of a revocable**
27 **trust upon the death, resignation, or incapacity of a trustee who**
28 **was also a settlor is not liable for any act or failure to act by the**
29 **settlor while the settlor was trustee.**

30 **(g) A successor trustee of a revocable trust who succeeds a**
31 **trustee who was also a settlor of the trust does not have a duty to:**



- 1 **(1) investigate any act or failure to act by the predecessor**
- 2 **trustee;**
- 3 **(2) review any accounting of the predecessor trustee; or**
- 4 **(3) take action on account of any breach of trust by the**
- 5 **predecessor trustee.**

